

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

PUBLIC NOTICE

ENTRY OF STANDING ORDER NO. 05-8

ADOPTING ADDITIONAL REVISIONS TO INTERIM BANKRUPTCY RULES

Effective October 17, 2005, and pursuant to 28 U.S.C. section 2071, Rule 83 of the Federal Rules of Civil Procedure and Rule 9029 of the Federal Rules of Bankruptcy Procedure, additional revisions to the Interim Bankruptcy Rules (“Interim Rules”), as approved by the Advisory Committee on Bankruptcy Rules and the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, in October 2005, are adopted in their entirety without change by the Judges of the United States Bankruptcy Court for the Eastern District of Virginia, to conform to the Bankruptcy Abuse Prevention and Consumer Protection Act (“Act”) of 2005. For cases and proceedings not governed by the Act, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, other than the Interim Rules, shall apply. The Interim Rules shall remain in effect until further order of the Court.

William C. Redden
Clerk of Court

Date: October 14, 2005

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

In re)
)
Adoption of Additional) Standing Order No. 05-8
Revisions to Interim)
Bankruptcy Rules)

ORDER ADOPTING ADDITIONAL REVISIONS TO INTERIM BANKRUPTCY RULES

On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) was enacted into law; and

Most provisions of the Act are effective on October 17, 2005; and

The Advisory Committee on Bankruptcy Rules has prepared additional revisions to the Interim Rules designed to implement the substantive and procedural changes mandated by the Act; and

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States also has approved these additional revisions to the Interim Rules and recommends the adoption of these Interim Rules to provide uniform procedures for implementing the Act; and

The general effective date of the Act has not provided sufficient time to promulgate rules after appropriate public notice and an opportunity for comment.

NOW, THEREFORE, IT IS ORDERED that:

Pursuant to 28 U.S.C. section 2071, Rule 83 of the Federal Rules of Civil Procedure and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the attached additional revisions to the Interim Rules are adopted in their entirety without change by the chief judge for the Court to be effective October 17, 2005, to conform to the Act. For cases and proceedings not governed by the Act, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, other than these Interim Rules, shall apply. These Interim Rules shall remain in effect until further order of the Court.

Dated: October 14, 2005

FOR THE COURT:

/s/ Douglas O. Tice, Jr
DOUGLAS O. TICE, JR.
Chief United States Bankruptcy

Judge

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

16 within 15 days thereafter, except as otherwise provided in
17 subdivisions (d), (e), (f), and (h) of this rule. In an
18 involuntary case, the list in subdivision (a)(2), and the
19 schedules statements, and other documents required by
20 subdivision (b)(1) shall be filed by the debtor within 15 days
21 of the entry of the order for relief. The documents required
22 by subdivision (b)(3) shall be filed with the petition in a
23 voluntary case. The statement required by subdivision (b)(7)
24 shall be filed by the debtor within 45 days after the first date
25 set for the meeting of creditors under § 341 of the Code in a
26 chapter 7 case, and no later than the last payment made by the
27 debtor as required by the plan or the filing of a motion for
28 entry of a discharge under § 1328(b) in a chapter 13 case.
29 The statement required by subdivision (b)(8) shall be filed by
30 the debtor not earlier than the date of the last payment made
31 under the plan or the date of the filing of a motion for entry
32 of a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b).

33 Lists, schedules, statements, and other documents filed prior
34 to the conversion of a case to another chapter shall be deemed
35 filed in the converted case unless the court directs otherwise.
36 Except as provided in § 1116(3) of the Code, any extension
37 of time for the filing of the schedules, statements, and other
38 documents may be granted only on motion for cause shown
39 and on notice to the United States trustee and to any
40 committee elected under § 705 or appointed under § 1102 of
41 the Code, trustee, examiner, or other party as the court may
42 direct. Notice of an extension shall be given to the United
43 States trustee and to any committee, trustee, or other party as
44 the court may direct.

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COMMITTEE NOTE

The rule is amended to require an individual debtor in a case under chapter 11, 12, and 13 to file a statement that there are no reasonable grounds to believe that the restrictions on a homestead exemption as set out in § 522(q) of the Code are applicable. Sections

1141(d)(5)(C), 1228(f), and 1328(h) each provide that the court shall not enter a discharge order unless it finds that there is no reasonable cause to believe that § 522(q) applies. Requiring the debtor to submit a statement to that effect in cases under chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge so that they can challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Interim Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

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2 (f) OTHER NOTICES. Except as provided in subdivision (l)
3 of this rule, the clerk, or some other person as the court may
4 direct, shall give the debtor, all creditors, and indenture
5 trustees notice by mail of: (1) the order for relief; (2) the
6 dismissal or the conversion of the case to another chapter, or
7 the suspension of proceedings under § 305; (3) the time

8 allowed for filing claims pursuant to Rule 3002; (4) the time
9 fixed for filing a complaint objecting to the debtor's
10 discharge pursuant to § 727 of the Code as provided in Rule
11 4004; (5) the time fixed for filing a complaint to determine
12 the dischargeability of a debt pursuant to § 523 of the Code
13 as provided in Rule 4007; (6) the waiver, denial, or
14 revocation of a discharge as provided in Rule 4006; (7) entry
15 of an order confirming a chapter 9, 11, or 12 plan; (8) a
16 summary of the trustee's final report in a chapter 7 case if the
17 net proceeds realized exceed \$1,500; (9) a notice under Rule
18 5008 regarding the presumption of abuse; ~~and~~ (10) a
19 statement under § 704(b)(1) as to whether the debtor's case
20 would be presumed to be an abuse under § 707(b); and (11)
21 the time to request a delay in the entry of the discharge under
22 §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time
23 fixed for accepting or rejecting a plan pursuant to Rule
24 3017(c) shall be given in accordance with Rule 3017(d).

COMMITTEE NOTE

The rule is amended to provide notice to creditors of the debtor's filing of a statement in a chapter 11, 12, or 13 case that there is no reasonable cause to believe that § 522(q) applies in the case. If a creditor disputes that assertion, the creditor can request a delay of the entry of the discharge in the case.

Rule 4004. Grant or Denial of Discharge

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(c) GRANT OF DISCHARGE.

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(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

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(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e) is pending,

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(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States

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13 under 28 U.S.C. § 1930(b) that is payable to the clerk upon
14 the commencement of a case under the Code, unless the court
15 has waived the fees under 28 U.S.C. § 1930(f);

16 (H) the debtor has not filed with the court a statement
17 regarding completion of a course in personal financial
18 management as required by Rule 1007(b)(7);

19 (I) a motion to delay or postpone discharge under
20 § 727(a)(12) is pending; ~~or~~

21 (J) a presumption that a reaffirmation agreement is an
22 undue hardship has arisen under § 524(m); or

23 (K) a motion to delay discharge, alleging that the
24 debtor has not filed with the court all tax documents required
25 to be filed under § 521(f), is pending.

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27 (3) If the debtor is required to file a statement under Rule
28 1007(b)(8), the court shall not grant a discharge earlier than
29 30 days after the filing of the statement.

COMMITTEE NOTE

Subdivision (c)(1) is amended by adding subparagraph (K) to implement § 1228(a) of Public Law No. 109-8.

The rule is also amended by adding subdivision (c)(3) that postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of § 522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision.

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

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(g) ADDRESSING NOTICES

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(2) Except as provided in § 342(f) of the Code, if If a

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creditor or indenture trustee has not filed a request

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designating a mailing address under Rule 2002(g)(1), the

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notices shall be mailed to the address shown on the list of

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creditors or schedule of liabilities, whichever is filed later. If

9 an equity security holder has not filed a request designating
10 a mailing address under Rule 2002(g)(1), the notices shall be
11 mailed to the address shown on the list of equity security
12 holders.

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COMMITTEE NOTE

The rule is amended because the 2005 amendments to § 342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. This provision does not apply in cases of nonindividuals in chapter 7 and in cases under chapters 11 and 12, so Rule 2002(g)(2) still operates in those circumstances. It also continues to apply in cases under chapters 7 and 13 if the creditor has not filed a notice under § 342(f). The amendment to Rule 2002(g)(2) therefore only limits that subdivision when a creditor files a notice under § 342(f).

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals

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1 (f) CERTIFICATION FOR DIRECT APPEAL TO COURT
2 OF APPEALS

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

3 (1) *Timely Appeal Required.* A certification of a
4 judgment, order, or decree of a bankruptcy court to a court of
5 appeals under 28 U.S.C. § 158(d)(2) shall not be treated as a
6 certification entered on the docket within the meaning of
7 § 1233(b)(4)(A) of Public Law No. 109-8 until a timely
8 appeal has been taken in the manner required by subdivisions
9 (a) or (b) of this rule and the notice of appeal has become
10 effective under Rule 8002.

11 (2) *Court Where Made.* A certification that a
12 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)
13 exists shall be filed in the court in which a matter is pending
14 for purposes of 28 U.S.C. § 158(d)(2) and this rule. ~~A matter~~
15 ~~is pending in a bankruptcy court until the docketing of the~~
16 ~~appeal of a final judgment, order, or decree in accordance~~
17 ~~with Rule 8007(b) or the grant of leave to appeal an~~
18 ~~interlocutory judgment, order, or decree under 28 U.S.C.~~
19 ~~§ 158(a). A matter is pending in a district court or~~

20 ~~bankruptcy appellate panel after an appeal of an interlocutory~~
21 ~~judgment, order, or decree has been docketed in accordance~~
22 ~~with Rule 8007(b) or leave to appeal has been granted under~~
23 ~~28 U.S.C. § 158(a). A matter is pending in a bankruptcy~~
24 ~~court until the docketing, in accordance with Rule 8007(b), of~~
25 ~~an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the~~
26 ~~grant of leave to appeal under 28 U.S.C. § 158(a)(3). A matter~~
27 ~~is pending in a district court or bankruptcy appellate panel~~
28 ~~after the docketing, in accordance with Rule 8007(b), of an~~
29 ~~appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant~~
30 ~~of leave to appeal under 28 U.S.C. § 158(a)(3).~~

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COMMITTEE NOTE

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative or in response to a request of a party. Certification also can be made by all of the appellants and appellees. An uncodified provision in Public Law No. 109-8, § 1233(b)(4), requires that, not

later than 10 days after a certification is entered on the docket, there must be filed with the circuit clerk a petition requesting permission to appeal. Given the short time limit to file the petition with the circuit clerk, subdivision (f)(1) provides that entry of a certification on the docket does not occur until an effective appeal is taken under Rule 8003(a) or (b).

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the “docketing” under Rule 8007(b) of an appeal of an interlocutory order or decree under 28 U.S.C. § 158(a)(2) or a final judgment, order or decree under 28 U.S.C. § 158(a)(1), or the granting of leave to appeal an any other interlocutory judgment, order or decree under 28 U.S.C. § 158(a)(3), whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court’s own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.